

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

LEVIATHAN MINE
ALPINE COUNTY, CALIFORNIA

REGIONAL WATER QUALITY
CONTROL BOARD, LAHONTAN
REGION, STATE OF CALIFORNIA

ADMINISTRATIVE ABATEMENT
ACTION

U.S. EPA Region IX
CERCLA Docket No. 2005-15

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9606(a)

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	1
II.	DEFINITIONS	1
III.	FINDINGS OF FACT	3
IV.	CONCLUSIONS OF LAW AND DETERMINATIONS	7
V.	NOTICE TO AFFECTED JURISDICTIONS	8
VI.	IMPLEMENTATION OF ACTION	8
VII.	NOTICE OF INTENT TO COMPLY	8
VIII.	PARTIES BOUND	9
IX.	WORK TO BE PERFORMED	9
X.	EPA PERIODIC REVIEW	12
XI.	ENDANGERMENT AND EMERGENCY RESPONSE	13
XII.	EPA REVIEW OF SUBMISSIONS	13
XIII.	QUARTERLY PROVISION OF DATA	14
XIV.	QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS	14
XV.	COMPLIANCE WITH APPLICABLE LAWS	14
XVI.	REMEDIAL PROJECT MANAGER	15
XVII.	LRWQCB's ACCESS TO SITE	15
XVIII.	SITE ACCESS AND DATA/DOCUMENT AVAILABILITY	15
XIX.	RECORD PRESERVATION	16
XX.	DELAY IN PERFORMANCE	17
XXI.	ASSURANCE OF ABILITY TO COMPLETE WORK	17
XXII.	OTHER CLAIMS	18
XXIII.	ENFORCEMENT, RESERVATIONS AND MODIFICATIONS	18
XXIV.	EFFECTIVE DATE AND COMPUTATION OF TIME	19
XXV.	OPPORTUNITY TO CONFER	20

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Abatement Action ("Administrative Action") provides for the performance by the California Regional Water Quality Control Board, Lahontan Region (the "LRWQCB") of specified portions of a non-time critical removal action ("NTCRA") in connection with the Leviathan Mine Site in Alpine County, California ("Leviathan Mine" or the "Site") selected by the United States Environmental Protection Agency ("EPA") in the EE/CA Approval and Non-Time Critical Removal Action Memorandum dated July 12, 2005 ("NTCRAM") (Appendix A). Pursuant to this Administrative Action, the LRWQCB will conduct the Work described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances, at or from the Site.

2. This Administrative Action is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9606(a) as amended, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, as amended by Executive Order No. 13016, August 30, 1996, 61 Federal Register 45871, further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-B and further redelegated by Regional Delegations dated September 29, 1997.

3. Performance of this work, compliance with this Administrative Action, and conferring with EPA prior to issuance shall not constitute or be construed as an admission of liability, or of EPA's findings, determinations, or statements contained in this Administrative Action. Nor, by complying with this Administrative Action, does the LRWQCB or the State of California waive any claim or defense arising in connection with the Administrative Action or the Site.

II. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Administrative Action which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Administrative Action or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Administrative Action" shall mean this Administrative Abatement Action and all appendices attached hereto. In the event of conflict between this Administrative Action and any appendix, this Administrative Action shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Administrative Action, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Administrative Action as provided in Section XXIV.

e. "EE/CA" shall mean the Engineering Evaluation/Cost Analysis for the non-time critical removal action at Leviathan Mine.

f. "EE/CA Approval and Non-Time Critical Removal Action Memorandum" or "NTCRAM" shall mean the EPA memorandum approving the EE/CA and selecting the removal action for the Site, as signed on July 12, 2005 by the Superfund Division Director, EPA Region IX, or his delegate, and all attachments thereto. The NTCRAM is attached as Appendix A and incorporated by reference.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Paragraph" shall mean a portion of this Administrative Action identified by an Arabic numeral.

j. "Parties" shall mean the LRWQCB and the EPA, Region IX.

k. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

l. "Removal Action" or "NTCRA" shall mean the entire non-time critical removal action for the Site described in the NTCRAM, including the Work required by this Administrative Action as well as all other portions of the removal action described in the NTCRAM.

m. "Site" shall mean the Leviathan Mine Superfund site, as described in the National Priority List ("NPL") listing dated May 11, 2000. 65 Fed. Reg. 30482; 40 CFR Part 300, Appendix B.

n. "Subparagraph" shall mean a portion of this Administrative Action identified by a lower case letter.

o. "State" shall mean the State of California Lahontan Regional Water Quality Control Board, unless another state or state agency is specified.

p. "Statement of Work" or "SOW" shall mean any statement of work for implementation of the NTCRA, issued pursuant to the NTCRAM, and any modifications made thereto in accordance with this Administrative Action.

q. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under California law.

r. "Work" shall mean all activities the LRWQCB is required to perform under this Administrative Action.

III. FINDINGS OF FACT

A. Site Description, Ownership History, and NPL Listing

5. The 656 acre Leviathan Mine property lies within a remote portion of northeastern Alpine County, California, on the eastern flank of the central Sierra Nevada, near the California-Nevada border, approximately 25 miles southeast of Lake Tahoe, and 6 miles east of Markleeville, California. Of the total property, approximately 253 acres are disturbed by mine related activities. With the exception of approximately 21 acres of disturbance on land managed by the United States Department of Agriculture, Forest Service ("U.S. Forest Service"), all disturbance is on the mine site owned by the State. As identified on the Topaz Lake and Mt. Siegel U.S. Geological Survey ("USGS") quadrangle sheets, the mine property is situated principally within Sections 15 and 22, Township 10 North, Range 21 East, although small portions of the workings extend into the southeastern and northwestern corners of the adjoining Sections 14 and 23, respectively.

6. Vehicular access to the mine is limited by snowfall and muddy road conditions, so that the Site is inaccessible to heavy equipment from as early as October to as late as July, depending on weather. Vehicular access to the mine is provided by unpaved roads from State Highway 89 on the southeast and from U.S. Highway 395 south of Gardnerville, Nevada, on the northeast. The California-Nevada border lies approximately three miles northeast of the mine.

7. The disturbed areas at Leviathan Mine are sparsely vegetated. Although there is some volunteer vegetation, most existing vegetation is due to localized revegetation efforts carried out by the LRWQCB. This remote mine has no potable water or power.

8. There are several sources of acid mine drainage ("AMD") at the Site, which impact Leviathan Creek. When a release from the Site occurs, it flows through the Leviathan Creek/

Bryant Creek watershed, which drains into the East Fork Carson River. The AMD released contains elevated concentrations of metals and metalloids, most notably arsenic, and also includes iron, aluminum, chromium, cobalt, copper, nickel, and zinc. The low pH and high metals content of the AMD eliminated most aquatic life in Leviathan and Bryant Creeks downstream of the mine, until response activities were initiated. These releases originate in the state of California and, at times, may flow into the state of Nevada through Washoe Tribal lands into the East Fork Carson River, which serves as a major source of water supply and a habitat for fish, including an historical habitat for the federally-listed threatened Lahontan cutthroat trout.

9. Anaconda Company owned and operated the mine from 1951 until 1962. During this period, Anaconda Company extracted sulfur ore through open pit mining. Mining ceased at the mine property around 1962. In 1977, Anaconda Company merged into Atlantic Richfield Company.

10. In 1984, the State acquired approximately 495 acres of the mine property to pursue cleanup and abatement of the water quality problems associated with historic mining. Jurisdiction over the mine property rests with the State Water Resources Control Board which, in turn, has delegated authority over the mine property to the LRWQCB.

11. On May 11, 2000 (65 Fed. Reg. 30482), pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA listed the Site on the National Priorities List, set forth at 40 CFR Part 300, Appendix B.

B. The Evaporation Ponds: Construction, Overflow, Treatment, and Enforcement

12. In an attempt to mitigate releases of AMD, the LRWQCB constructed five lined storage and evaporation ponds on-site between 1983-1985. These ponds collect AMD from an adit (the "Adit") and a drainage system built under the mine pit ("Pit Underdrain or "PUD"). From the time of the construction of the ponds until the first successful season of treatment in 1999, evaporation during the dry summer season would decrease the total volume of AMD and concentrate the contaminants within these ponds. However, the combined flow of AMD and direct precipitation (rain and snow) into the ponds exceeded evaporation losses from the ponds in most years between 1985 and 1999, so that the ponds usually reached capacity (approximately 16 million gallons) and then overflowed into Leviathan Creek. Estimates of the overflow from a particularly wet winter range up to 9 million gallons per year. Without annual preventative action, such overflow could reoccur.

13. In the summer of 1999, the LRWQCB conducted a treatability study to evaluate a particular process for neutralizing the AMD held in the evaporation ponds. The process tested by the LRWQCB is referred to as biphasic neutralization. The treatability study demonstrated that biphasic neutralization could be used to treat the AMD to a level acceptable for discharge to Leviathan Creek, considering all of the exigencies of the situation prior to design of further response actions. Operation of this system in the summer of 1999 reduced the level of AMD in the ponds significantly. Further activity in the spring of 2000 prevented overflow that year.

14. On July 29, 2000, EPA issued an Administrative Abatement Action (“AAA”) under section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to the LRWQCB, pursuant to which the LRWQCB treated the AMD in the evaporation ponds. The LRWQCB successfully treated sufficient quantities of AMD in the summer of 2000 so as to prevent pond overflows in 2001.

15. The AAA was modified in each of the years 2001, 2002, 2003, and 2004, to provide for the LRWQCB to perform a similar removal action each summer, each of which has succeeded in preventing pond overflows in the following year. During the past four summers, the LRWQCB effectively emptied the ponds of AMD. Each year, EPA and the LRWQCB have further developed the treatment system, so as to respond to changing chemistry in the ponds and improve AMD treatment and sludge handling techniques.

C. Other AMD Releases, Early Response Actions, and the Phased RI/FS

16. In addition to the contaminated water collected in the evaporation ponds, other sources of untreated AMD from the Leviathan Mine currently contribute year-round to the contamination of the Leviathan Creek/Bryant Creek watershed. The Channel Underdrain (“CUD”) collects subsurface water from beneath a portion of the concrete Leviathan Creek diversion channel and discharges roughly 15 to 30 gallons per minute (“gpm”) into Leviathan Creek. The Delta Seep area is a flow of approximately 10 gpm from the lowest portion of the mine waste rock in Leviathan Canyon, known as the Delta Slope, approximately 600 feet downstream from the end of the diversion channel. Aspen Seep is a series of flows totaling more than 10 gpm from low points of the waste rock in the Aspen Creek drainage. Water quality measurements taken by the LRWQCB indicate that these sources are somewhat less acidic and less highly concentrated in arsenic and metals than water collected in the evaporation ponds.

17. On November 22, 2000, EPA issued an Administrative Order requiring Atlantic Richfield to submit work plans for a phased Remedial Investigation/ Feasibility Study (“RI/FS”) for developing a long-term response to releases from Leviathan Mine (“Administrative Order”). Additionally, the Administrative Order requires Atlantic Richfield to plan and implement Early Response Actions (“ERAs”) to address releases from Leviathan Mine that are not captured in the evaporation ponds.

18. Pursuant to the Administrative Order, ARCO Environmental Remediation L.L.C. (“AERL”), has implemented ERAs on behalf of Atlantic Richfield since 2001. The ERAs have emphasized treatment of known sources of AMD, both to develop feasible methods of addressing these releases and to allow examination of whether there are other sources of contamination originating at the Site by measuring how the creeks respond to treatment of the known releases.

19. During the summers of 2001, 2002, 2003, and 2004, AERL captured and treated AMD from the CUD.

20. During 2001 and 2002, the LRWQCB conducted a geotechnical analysis of the stability of the mine wastes near the Delta Seep. In 2003 and 2004, AERL captured the Delta Seep flows and pumped this AMD uphill for treatment along with CUD flows. However, slope instability issues and mudflows from rain storms hampered Delta Seep efforts in both 2003 and 2004, and the Delta Seep effort ended early in the 2004 season. A major project sponsored by the LRWQCB to reconfigure and stabilize the Delta Slope is currently underway in 2005.

21. The seep of AMD into Aspen Creek was partially addressed by a demonstration biological treatment project operated by University of Nevada - Reno researchers. The Aspen Creek treatment utilizes a biological process to reduce sulfate to sulfide and to precipitate metal sulfides which are relatively insoluble. This project was funded by the LRWQCB until June 30, 2001, and is currently funded by AERL. Pursuant to the Administrative Order, AERL expanded and improved this biological treatment system, which began capturing and treating all AMD flowing into the Aspen Creek by the summer of 2003. This system works through the winter, and it is anticipated that it will continue to be operated and maintained by Atlantic Richfield for the duration of the NTCRA.

22. An integral part of past and future pond water treatment and other response actions includes assessment of the effectiveness of the action through water quality monitoring at the Site and in downstream waters as well as measurement of streamflow and meteorologic conditions throughout the year. The LRWQCB has monitored water quality since its first involvement, and has increased the intensity of the investigation of site characteristics since 1998.

23. The ERAs to date have demonstrated effective technologies for seasonal treatment of the discharges at the Site and confirmed that the known releases contribute the majority of contaminants affecting the streams during the dry season. Based on what has been learned over the past few years through ERAs performed by AERL, the removals performed by the LRWQCB, the initial stages of RI/FS activity, and the comments of other stakeholders, EPA, on November 13, 2003, directed Atlantic Richfield to prepare an EE/CA to evaluate options for capturing and treating the AMD year-round to stringent discharge standards. It is necessary to intercept and treat these known releases year-round, both to improve water quality in the affected streams on a year-round basis and to provide an opportunity to determine the scope of the subsequent phases of the RI/FS, given that such interception and treatment can be expected to substantially alter the nature and extent of the threats posed by the Site. Year-round treatment will greatly improve water quality in Leviathan and Bryant Creeks on a year-round basis and set the stage for the long term RI/FS, because the elimination of the major known discharges will make it possible to study the effect of sediments and any other remaining sources.

24. Atlantic Richfield developed the EE/CA with input from EPA and other stakeholders and submitted the EE/CA on April 5, 2004. The LRWQCB had a reasonable opportunity to review and comment on the proposed EE/CA pursuant to section 106(a) of CERCLA, 42 U.S.C. §9606(a), and 40 CFR § 300.500. EPA received comments from the public, in writing and in a public meeting held on Tuesday, May 4, 2004. EPA responded to significant comments and approved the EE/CA in the NTCRAM pursuant to 40 C.F.R. § 300.415(n)(4)(iv).

25. The NTCRA is supported by an Administrative Record that includes the documents and information upon which EPA based the selection of the NTCRA.

26. In the NTCRAM, EPA selected a Non-Time Critical Removal Action at Leviathan Mine including on-site winter treatment of known AMD sources to be implemented in two phases. Phase 1 includes design, construction and operation of a new on-site winterized treatment system to test the reliability and effectiveness for year-round treatment of AMD from the CUD and Delta Seep. During Phase 1, AMD from the Adit and PUD will continue to be captured during the winter for separate summer treatment. If Phase 1 proves successful, the NTCRAM calls for advancement to Phase 2, when the winterized treatment system would be reconfigured to test the reliability and effectiveness of year-round treatment of combined flows from the Adit, PUD, CUD and Delta Seeps. The bio-reactor treatment of the Aspen Seep will continue during both phases.

27. This Administrative Action provides for implementation of portions of Phase 1 of the NTCRA, including those portions related to year-round capture and seasonal treatment of the flows from the Adit and PUD, as well as continued maintenance of the Site. If Phase 1 proves successful, this Administrative Action may need to be amended, supplemented, or superseded by another administrative action or agreement to provide for implementation of Phase 2. Performance of this Administrative Action will further contribute to the efficient performance of the anticipated long-term remedial action, as required by 40 C.F.R. § 300.415(d). EPA remains committed to a full RI/FS process that will lead to a final Record of Decision for the entire Site.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above, and the Administrative Record supporting the NTCRA, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The State is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The State is a current owner of the site and is subject to this Administrative Action under section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

e. For all purposes under the NCP and CERCLA, including but not limited to sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b), 9607(c)(3), this

Administrative Action is an order under section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

f. The conditions at the Site described in the Findings of Fact above constitute an actual or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

g. The actual or threatened release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

h. The Work required by this Administrative Action is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Administrative Action, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

V. NOTICE TO AFFECTED JURISDICTIONS

29. By April 15, 2005, prior to issuing this Administrative Action, EPA gave notice of this action to the states of California and Nevada and the Washoe Tribe of Nevada and California that EPA would be issuing this Administrative Action. With respect to this Administrative Action, for purposes of notice under section 106(a) and involvement by the state of California under 40 CFR § 300.500 in any response activity at the Site, the LRWQCB is the designated state agency acting on behalf of the state of California.

VI. IMPLEMENTATION OF ACTION

30. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, the LRWQCB shall comply with the following provisions including the attachment to this Administrative Action, all documents incorporated by reference into this Administrative Action, and all schedules and deadlines in this Administrative Action, attached to this Administrative Action, or incorporated by reference into this Administrative Action. All such Work is contingent upon the availability of funding duly appropriated by the California Legislature into the LRWQCB's budget for such Work. Any failure to comply with the approved Work Plans without sufficient cause shall be a violation of this Administrative Action.

VII. NOTICE OF INTENT TO COMPLY

31. The Parties have discussed this Administrative Action prior to its issuance. Within seven days of the effective date of this Administrative Action, the LRWQCB shall provide written notice to EPA's Remedial Project Manager ("RPM") stating that it intends to perform all Work required by this Administrative Action during a one year period, contingent upon the availability of funding duly appropriated by the California Legislature into the LRWQCB's budget for such Work. For each year that the first phase of the NTCRA continues, the RPM may provide written

notice to the LRWQCB of the necessity to continue the Work for an additional year. Within seven days of the receipt of such notice, the LRWQCB shall provide written notice to the RPM stating that it intends to perform all Work required by this Administrative Action during an additional one year period, contingent upon the availability of funding duly appropriated by the California Legislature into the LRWQCB's budget for such Work, which the LRWQCB shall request for that year.

VIII. PARTIES BOUND

32. This Administrative Action shall apply to the LRWQCB and its successors.

33. The LRWQCB shall provide a copy of this Administrative Action to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Administrative Action, within five working days after the date of receipt of this Administrative Action or on the date such services are retained, whichever date occurs later. The LRWQCB shall also provide a copy of this Administrative Action to each person representing the LRWQCB with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Administrative Action. With regard to the activities undertaken pursuant to this Administrative Action, each contractor and subcontractor shall be deemed to be related by contract to the LRWQCB within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3); but shall be considered "response action contractors" within the meaning of section 119 of CERCLA, 42 U.S.C. § 9619, and subject to all provisions of that section. Notwithstanding the terms of any contract, the LRWQCB is responsible for compliance with this Administrative Action and for ensuring that its contractors, subcontractors and agents comply with this Administrative Action, and perform any Work in accordance with this Administrative Action.

34. Not later than sixty (60) days prior to any transfer of any real property interest in any property included within the Site, the LRWQCB shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

IX. WORK TO BE PERFORMED

35. The LRWQCB shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, the LRWQCB shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

36. All aspects of the Work to be performed by the LRWQCB pursuant to this Administrative Action shall be under the direction and supervision of a qualified project manager. The LRWQCB has designated Chris Stetler, Senior Water Resource Control Engineer, as its project manager. If at any time the LRWQCB proposes to use a different project manager, the

LRWQCB shall notify EPA's RPM before the new project manager performs any Work under this Administrative Action.

37. The LRWQCB will conduct the following Work as described in Section V of the NTCRAM:

- i. Continue the existing summer bi-phasic treatment of the flows from the Adit and PUD, captured year-round in the existing ponds, for each year EPA directs continued implementation of Phase I of the NTCRA;
- ii. Maintain the Site as described in the approved Work Plan, including the ponds, drainage and diversion channels, and gates and fences;
- iii. Monitor conditions at the Site as described in the approved Work Plan, including flow rate measurements, surface water quality and meteorological information.

38. Within thirty (30) days of sending any written Notice of Intent to Comply pursuant to Paragraph 31, the LRWQCB shall submit to EPA for approval a draft Work Plan for Work generally described in the preceding paragraph, unless the schedule is extended by the RPM.

39. Each draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Administrative Action. Each draft Work Plan shall include preparation of a Quality Assurance Project Plan ("QAPP") as described in Paragraph 59, or appropriate modification of the existing QAPP, as part of the Work Plan.

40. EPA may approve, disapprove, require revisions to, or modify any draft Work Plan in whole or in part, as described in Section XII of this Administrative Action. The LRWQCB shall implement each Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, each Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Administrative Action.

41. The LRWQCB shall not commence any Work except in conformance with the terms of this Administrative Action. The LRWQCB shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to the preceding paragraph.

42. Health and Safety Plan. Concurrent with the submittal of each Work Plan, The LRWQCB shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site Work under this Administrative Action. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29

C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. The LRWQCB shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the associated Work Plan.

43. The LRWQCB shall submit three copies of all plans, reports or other submissions required by this Administrative Action, or any approved Work Plan. Documents which the LRWQCB has in electronic form shall also be sent by electronic mail, to the electronic mail address specified by the RPM.

44. Upon request by EPA, the LRWQCB shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis under the direction of the LRWQCB.

45. Upon request by EPA, the LRWQCB shall allow EPA or its authorized representatives to take split and/or duplicate samples. The LRWQCB shall notify EPA not less than 3 days in advance of any sample collection activity for receiving waters, unless shorter notice is agreed to by EPA. No advance notice is required for routine monitoring associated with pond water treatment activities. If any unanticipated situation arises that the LRWQCB chooses to monitor through sample collection, the LRWQCB shall notify EPA as soon as practicable concerning both the unanticipated situation and the sample collection activity. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the LRWQCB to take split or duplicate samples of any samples it takes as part of its oversight of the LRWQCB's implementation of the Work.

46. The LRWQCB has retained contractors to perform, under the oversight of the LRWQCB, some or all of the NTCRA required by this Administrative Action. The names and qualifications of such contractors shall be set forth in the Work Plans submitted by the LRWQCB. The LRWQCB shall notify EPA of the name(s) and qualifications of any other contractor(s) or subcontractor(s) retained to perform the NTCRA under this Administrative Action at least ten (10) day prior to commencement of such Work.

47. The Work performed by the LRWQCB pursuant to this Administrative Action shall, at a minimum, achieve the Performance Standards specified in the NTCRAM and in the Work Plans.

48. Notwithstanding any action by EPA, the LRWQCB remains fully responsible for achievement of the Performance Standards in the NTCRAM and Work Plans. Nothing in this Administrative Action, or in EPA's approval of a Work Plan, or in the NTCRAM, or approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the NTCRA, or Work Plans, will achieve the Performance Standards set forth for such Work in the NTCRAM or in the Work Plans. The LRWQCB's compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable performance standards.

49. The off-site shipment of any hazardous substance, pollutant, or contaminant as defined under CERCLA sections 101(14) and (33), 42 U.S.C. §§ 101(14) and (33), from the Site is subject to 40 CFR § 300.440. The LRWQCB shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's RPM of such shipment of hazardous substances. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the State will not exceed ten (10) cubic yards.

a. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. The LRWQCB shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state, if any, will be determined by the LRWQCB. The LRWQCB shall provide all relevant information, including information under the categories noted in subparagraph a above, on the off-site shipments as soon as practicable after arrangements for shipping are made, and before the hazardous substances are actually shipped.

50. Within thirty (30) days after the LRWQCB concludes that the seasonal work on the NTCRA has been fully performed, the LRWQCB shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by the LRWQCB and EPA. The pre-certification inspection shall be followed by a written report submitted within ninety (90) days of the inspection by the LRWQCB's Project Coordinator certifying that all work to date on the NTCRA has been completed in full satisfaction of the requirements of this Administrative Action. At a minimum this annual report shall: (1) describe the actions which have been taken to comply with this Administrative Action during the prior year; (2) include all results of sampling and tests and all other data received by the LRWQCB and not previously submitted to EPA; and (3) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

X. EPA PERIODIC REVIEW

51. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Administrative Action adequately protects human health and the environment.

XI. ENDANGERMENT AND EMERGENCY RESPONSE

52. In the event of any action or occurrence directly related to the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, the LRWQCB shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's RPM or, if the RPM is unavailable, the EPA Emergency Response Office, Region IX. The LRWQCB shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Administrative Action, including but not limited to the Health and Safety Plan.

53. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XII. EPA REVIEW OF SUBMISSIONS

54. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Administrative Action, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct the LRWQCB to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the NTCRA. As used in this Administrative Action, the terms "approval by EPA," "EPA approval," or a similar term means the actions described in clauses (a) or (b) of this Paragraph.

55. In the event of approval or approval with modifications by EPA, the LRWQCB shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

56. Upon receipt of a notice of disapproval or a request for a modification, the LRWQCB shall, within twenty-one (21) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, the LRWQCB shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

57. If any submission is disapproved by EPA, and the LRWQCB fails to correct such deficiency within the twenty-one (21) day or longer time period allowed by EPA to correct any such deficiency, the LRWQCB shall be deemed to be in violation of this Administrative Action.

XIII. QUARTERLY PROVISION OF DATA

58. In addition to the other deliverables set forth in this Administrative Action, the LRWQCB shall, on a quarterly schedule, make available to EPA all sampling and monitoring data collected with respect to actions and activities undertaken pursuant to this Administrative Action. The data shall be made available on or before the fifth day of each January, April, July, and October following the effective date of this Administrative Action. The data shall either be mailed to EPA or provided to the Leviathan Mine database operated by Atlantic Richfield under the direction of EPA. The LRWQCB's obligation to submit data shall continue until completion of the Administrative Action.

XIV. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

59. The LRWQCB shall use the quality assurance/quality control procedures described in the EPA Region 9 "Sampling and Analysis Plan Guidance and Template, Version 2" March 2000. For long-term monitoring activities, EPA Order 5360.1, Change 1, 1998, requires that data collection activities conform to the requirements in American National Standard ANSI/ASQC E4-1994, *Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs*. A QAPP must be developed for the long-term monitoring activities planned. The EPA guidance documents, "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations," (EPA QA/R-5, Draft Final, October, 1997), and Guidance for Quality Assurance Project Plans (EPA QA/G-5, February, 1998) or any guidance that supersedes these documents should be used when preparing the QAPP. These are available at www.epa.gov/quality1/qatools.html (Also see, "Requirements for Non-EPA Organizations" at this website for a more complete discussion.) The QAPP is to be approved by EPA's Region 9 Quality Assurance Manager. To provide quality assurance and maintain quality control, the LRWQCB shall:

- a. Use only laboratories which have a documented Quality Assurance Program that complies with EPA guidance document EPA QA/ R-5.
- b. Ensure that the laboratory used by the LRWQCB for analyses performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA.
- c. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the LRWQCB for analyses.

XV. COMPLIANCE WITH APPLICABLE LAWS

60. All activities by the LRWQCB pursuant to this Administrative Action shall be performed in accordance with all applicable local, state and federal laws and regulations to the extent required by the NTCRAM. EPA has determined that the activities contemplated by this

Administrative Action are consistent with the NCP.

61. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-site.

62. This Administrative Action is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVI. REMEDIAL PROJECT MANAGER

63. All communications, whether written or oral, from the LRWQCB to EPA shall be directed to EPA's RPM. The LRWQCB shall submit to EPA three (3) copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Administrative Action, and shall send these documents by first class mail. EPA's RPM is:

Kevin Mayer
75 Hawthorne Street SFD 7-2
San Francisco, CA 94105
(415) 972-3176

64. EPA has the unreviewable right to change its RPM. If EPA changes its RPM, EPA will inform the LRWQCB in writing of the name, address, and telephone number of the new RPM.

65. EPA's RPM shall have the authority lawfully vested in a RPM and On-Scene Coordinator by the NCP, 40 CFR Part 300. EPA's RPM shall have authority, consistent with the NCP, to halt any work required by this Administrative Action, and to take any necessary response action.

XVII. LRWQCB'S ACCESS TO SITE

66. The property surrounding Leviathan Mine, and over which access to the Site is gained, is owned by the United States and managed by the U.S. Forest Service. Notwithstanding that the LRWQCB believes it may own an easement over Leviathan Mine Road, in June 1999, the LRWQCB entered into an agreement regarding road access and uses of the National Forest with the U.S. Forest Service. The agreement authorizes the LRWQCB, other state agencies, and their contractors, representatives and agents, use of the Leviathan Mine Road to access the Site to, among other things, pursue cleanup and abatement of water quality contamination at the Site.

XVIII. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

67. The LRWQCB shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the Work under this Administrative Action or where documents required to be prepared or maintained

by this Administrative Action are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or the LRWQCB and its representatives or contractors pursuant to this Administrative Action; reviewing the progress of the LRWQCB in carrying out the terms of this Administrative Action; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the LRWQCB. The LRWQCB shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all non-privileged records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Administrative Action. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data. Furthermore, no document, report or other information created or generated pursuant to the requirements of this Administrative Action shall be withheld on the grounds that it is privileged.

68. The LRWQCB may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Administrative Action under 40 CFR § 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 CFR § 2.203(b) and substantiated by the LRWQCB at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 CFR Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the LRWQCB.

XIX. RECORD PRESERVATION

69. At EPA's request, the LRWQCB shall make available for inspection and copying, or shall copy and furnish to EPA at the option and expense of the LRWQCB, all non-privileged documents and information within its possession and/or control or that of its contractors or agents relating to the Work or to the implementation of this Administrative Action, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The LRWQCB shall also make available to EPA for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

70. Until ten (10) years after the effective date of this Administrative Action, the LRWQCB shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of its contractors and agents on and after the effective date of this Administrative Action that relate in any manner to the hazardous substances found on or released from the Site. At the conclusion of this document retention period, the

LRWQCB shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States, the LRWQCB shall grant EPA access to non-privileged documents for purposes of inspection or copying by EPA, or shall copy and furnish to EPA such documents at the option and expense of the LRWQCB.

71. Until ten (10) years after the effective date of this Administrative Action, the LRWQCB shall preserve, and shall instruct its contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the Work. Upon the conclusion of this document retention period, the LRWQCB shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, the LRWQCB shall grant EPA access to non-privileged documents for purposes of inspection or copying by EPA, or shall copy and furnish to EPA such documents at the option and expense of the LRWQCB.

XX. DELAY IN PERFORMANCE

72. Any delay in performance of this Administrative Action that, in EPA's judgment, is not properly justified by the LRWQCB under the terms and conditions of this Administrative Action, shall be considered a violation of this Administrative Action. Any delay in performance of this Administrative Action shall not affect the LRWQCB's obligations to fully perform all obligations under the terms and conditions of this Administrative Action.

73. The LRWQCB shall notify EPA of any delay or anticipated delay in performing any requirement of this Administrative Action. Such notification shall be made by telephone to EPA's RPM within forty-eight (48) hours after the LRWQCB first knew or should have known that a delay might occur. The LRWQCB shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, the LRWQCB shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the LRWQCB should not be held strictly accountable for failing to comply with any relevant requirements of this Administrative Action, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Administrative Action are not a justification for any delay in performance.

XXI. ASSURANCE OF ABILITY TO COMPLETE WORK

74. Once the California Legislature approves the State budget for the relevant fiscal year, the LRWQCB will demonstrate its ability to complete the Work required by this Administrative Action by presenting to EPA information regarding its legislative appropriation for the purpose of conducting activities which include the Work. EPA acknowledges that the LRWQCB's ability to complete the Work is contingent upon the availability of funding duly appropriated by the California Legislature into the LRWQCB's budget for such Work. Lack of such funding for the Work shall not constitute a violation of this Administrative Action.

75. The LRWQCB shall require its contractors and subcontractors to have adequate insurance coverage for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of the LRWQCB pursuant to this Administrative Action, to the extent such insurance is required by the State Contracting Manual. The LRWQCB shall ensure that such insurance is maintained for the duration of the Work required by this Administrative Action.

XXII. OTHER CLAIMS

76. The EPA, by issuance of this Administrative Action, assumes no liability on its own behalf or on behalf of the United States for any injuries or damages to persons or property resulting from acts or omissions by the LRWQCB, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Administrative Action. Neither EPA nor the United States may be deemed to be a party to any contract entered into by the LRWQCB or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Administrative Action.

77. This Administrative Action does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

78. Nothing in this Administrative Action shall constitute a satisfaction of or release from any claim or cause of action against the LRWQCB, the state of California, or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

XXIII. ENFORCEMENT, RESERVATIONS AND MODIFICATIONS

79. EPA reserves the right to bring an action against the LRWQCB under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Administrative Action and not reimbursed by the LRWQCB. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, and the costs of compiling the cost documentation to support any oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

80. Notwithstanding any other provision of this Administrative Action, at any time during the NTCRA, EPA may perform its own studies, complete the NTCRA (or any portion of the NTCRA) as provided in CERCLA and the NCP, and seek reimbursement from the LRWQCB for its costs, or seek any other appropriate relief.

81. Nothing in this Administrative Action shall preclude EPA from taking any additional enforcement actions, including modification of this Administrative Action or issuance of additional Administrative Actions, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring the LRWQCB in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any other applicable law.

82. Modifications to any Work Plan or schedule may be made in writing by the RPM. Any other modification of this Administrative Action may only be made in writing by signature of an EPA Superfund Division Branch Chief. If the LRWQCB seeks permission to deviate from any approved Work Plan or schedule, the LRWQCB's project manager shall submit a written request to EPA for approval outlining the proposed modification and its basis. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the LRWQCB shall relieve the LRWQCB of its obligation to obtain such formal approval as may be required by this Administrative Action, and to comply with all requirements of this Administrative Action unless it is formally modified.

83. Notwithstanding any provision of this Administrative Action, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

84. The LRWQCB shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$32,500 for each day in which the LRWQCB willfully violates, or fails or refuses to comply with this Administrative Action without sufficient cause. In addition, failure to properly provide response action under this Administrative Action, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

85. Nothing in this Administrative Action shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

86. If a court with jurisdiction over the United States issues an order that invalidates any provision of this Administrative Action or finds that the LRWQCB has sufficient cause not to comply with one or more provisions of this Administrative Action, the LRWQCB shall remain bound to comply with all provisions of this Administrative Action not invalidated by the court's order.

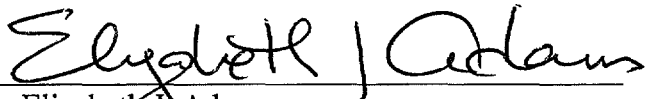
XXIV. EFFECTIVE DATE AND COMPUTATION OF TIME

87. This Administrative Action shall be effective the day it is signed by the Director of the Superfund Division or his delegatee. All times for performance of activities under this Administrative Action shall be calculated from this effective date.

XXV. OPPORTUNITY TO CONFER

88. EPA conferred with the LRWQCB prior to the issuance of this Administrative Action. This conference was not an evidentiary hearing, and did not constitute a proceeding to challenge this Administrative Action; nor did it constitute concurrence by the LRWQCB or the state of California with the Administrative Action. It did not give the LRWQCB a right to seek review of this Administrative Action, or to seek resolution of potential liability, and no official stenographic record of the conference was made. Because this conference has taken place, no further opportunity to confer is extended by this Administrative Action.

BY:


Elizabeth J. Adams
Chief, Site Cleanup Branch, Superfund Division
Region IX
U.S. Environmental Protection Agency

DATE:

